

14 February 2005

Mr. Jonathan Trout  
Secretary/Treasurer  
Louisville Metro Air Pollution Control District  
850 Barret Avenue  
Louisville, Kentucky 40204-1745

Re: **STAR Program Comments**  
**Caldwell Tanks, Inc.**  
**Title V Permit No. 134-98-TV**

Dear Mr. Trout:

Caldwell Tanks, Inc. has prepared these comments in response to the Louisville Metro Air Pollution Control District's (APCD) 14 January 2005 issuance for formal public comment of the regulatory package known as the Strategic Toxic Air Reduction (STAR) Program. Caldwell Tanks has been following the proposed STAR Program with interest since the Mayor's public announcement in September 2004.

As concerned citizens and responsible corporate partners in Louisville, we agree air toxics should be regulated as necessary to protect public health and the environment, and we support a focused, multi-source sector, risk-based approach to accomplishing that goal. However, our preliminary evaluation of this complex regulatory program has led us to believe the broad application of the proposed STAR Program specifically targets only permitted stationary sources. It is our opinion this strategy will result in widespread negative impacts to our local economy with no assurances of widespread community benefit.

**General Comments:**

1. As a member of Greater Louisville Inc. (GLI), Caldwell Tanks has been participating in review of this regulatory package with the GLI Environmental Affairs Committee and generally supports GLI's programmatic and specific technical comments. We are especially concerned about the scientific, legal, and authority-related flaws GLI has identified in the Star Program. In our opinion, however, although GLI prepared and proposed revisions to the draft regulations, they were prepared following the District's overall strategy and as requested by APCD Board members, and are still unnecessarily broad and stringent.
2. The APCD has not provided adequate opportunity for an organized, formal group of county-wide affected stakeholders to participate in meaningful technical and socioeconomic analysis and dialogue with the APCD. The public meetings held at various locations, while a necessary part of the regulatory process, did not provide the customary formal stakeholder involvement opportunity. The West County Air Toxics Taskforce did not include a reasonable opportunity for county-wide stakeholder participation; it was clearly focused on western Jefferson County individuals, organizations, and business. The U.S. Environmental Protection Agency (USEPA) has taken years to develop less-complicated regulatory programs and has included true

stakeholder participation representative of the affected entities. The APCD only proposed regulations in September 2004 with possible promulgation in April 2005, a seven-month period. Furthermore, we believe the APCD Board has not allowed sufficient time for even the Board to fully understand the effects of the STAR program and examine its potential for achieving actual success.

At a minimum, Caldwell Tanks strongly encourages the APCD to extend the formal public comment period for the STAR Program until a scientific stakeholder process can fully evaluate the technical intricacies of the proposed program.

3. According to the EPA's recent National-Scale Air Toxics Assessment (NATA), stationary sources (including major, minor, and area sources) represent approximately 50% of the total HAP emissions nationwide; major sources represent about 50% of the stationary source HAP emissions, or about 25% of total hazardous air pollutant (HAP) emissions nationwide. While we recognize specific, local stationary sources have been identified which contribute to Louisville Metro air toxics issues, Caldwell Tanks believes the proposed broad regulatory package poses many unknowns; will result in significant, unfair burden and expense on stationary sources; and produce little, if any, measurable benefit in many cases. The additional costs associated with air toxics evaluations, modeling, recordkeeping, and reporting alone appear to be substantial, with the prospect of potentially significant compliance costs (see comment 7 below). As a Title V source, Caldwell Tanks already expends considerable effort on recordkeeping, monitoring, and reporting to maintain compliance with existing regulations for our HAP and criteria pollutant emissions. It is further our opinion the STAR program should focus on specific areas of the APCD's jurisdiction with elevated air toxics concentrations (e.g., the WCATS found 18 Toxic Air Contaminants (TACs) at elevated levels greater than background at certain monitors).

Caldwell Tanks urges the APCD to pursue an air toxics solution that targets only those TACs with measured elevated concentrations in the air. The program should proportionally regulate all sources of air toxics, including mobile sources (e.g., automobiles and aircraft), area sources, and transport from other regions, to achieve its stated goals without unfair economic hardship on one source sector.

4. Caldwell Tanks is assessing the impacts and potential methods to achieve compliance with the National Emission Standards for Hazardous Air Pollutants (NESHAPs) as promulgated in 40 CFR Part 63, Subpart M for our facility. The compliance date is January 2, 2007. Caldwell is concerned that changes in operations or facility configuration to comply with the NESHAP requirements by the deadline may not be sufficient to achieve compliance with future STAR Program requirements, perhaps resulting in wasted investment on inadequate process enhancements.

Caldwell Tanks requests the APCD consider the effects of NESHAP implementation timing and benefits in development of the STAR Program.

5. The STAR Program does not include criteria for measurement of its success or effectiveness. Such a broad, complex, and expensive program must have measurable criteria for evaluation of its success. For instance, Caldwell Tanks believes the nationwide implementation of NESHAP rules over the next few years will reduce TAC concentrations, making it difficult, if not impossible, to judge the true effectiveness of the STAR Program. Furthermore, the public could perceive the program is not successful if

future measured concentrations of TACs indicate the total cancer risk levels are not reduced to less than  $1 \times 10^{-6}$ , which is possible since background monitors (which theoretically will see no air toxics reductions because of the STAR program) already exceed some  $1 \times 10^{-6}$  cancer risk levels, according to the West County Air Toxics Study (WCATS).

Caldwell Tanks requests the APCD include criteria for measuring the success of the STAR Program and include regulatory provisions to "scale-back" or "sunset" certain requirements for stationary sources if the APCD cannot prove the program is achieving the promised goal of "...a focused, strategic plan that will significantly reduce levels of toxic chemicals in our air beginning next year and prompt sharp reductions over the next five years" (Mayor Abramson's September 9, 2004 press release).

6. The APCD needs to develop a public education and outreach program to better inform Louisville Metro residents about the air pollution risks from all sources. Ozone is an excellent local example of a well-publicized air pollutant that has an airborne concentration level that is particularly susceptible to changes in meteorological conditions. Meteorological conditions have a significant impact on outdoor air pollution, and can vary the actual exposure experienced greatly. Mobile source HAPs have been well documented, but are too easily dismissed because the population feels a direct disagreeable impact from their control (as evidenced by the recent public support for discontinuation of the Vehicle Emission Testing program). As another example, the USEPA's recently published NATA stated most individuals spend 90 percent of their time indoors. While this clearly does not apply to each person within the Louisville Metro area, it helps put the potential public exposure to outdoor air pollution sources in perspective. Indoor pollution sources, such as radon, can be a significant risk to public health under certain conditions. Radon in indoor air is estimated to cause about 21,000 lung cancer deaths each year in the United States. The USEPA has designated Jefferson County Kentucky as Zone 1 (the potential for greater than 4 pCi/L) for radon gas exposure, which is the highest designation possible ([www.epa.gov/iaq/radon/zonemap/kentucky.htm](http://www.epa.gov/iaq/radon/zonemap/kentucky.htm)). Caldwell Tanks believes public education pertaining to all air pollution sources is critical to the unbiased understanding of health risks, and to enhance the public's confidence in available information (such as future STAR Program and West County Air Toxics Taskforce reports). This effort is particularly important now that the public and media have been biased by release of the ultra-conservative modeling and risk assessment criteria published in the proposed regulations without adequate explanation or comparison to reasonable approaches endorsed by the USEPA and respective agencies for other jurisdictions. Any use of more reasonable criteria in future STAR Program versions of the regulations may now be perceived as a weakened program. A true scientific stakeholder process could have averted such misconceptions.

Caldwell Tanks asks the APCD to develop a public outreach program to better inform Louisville Metro residents about the air pollution risks from all sources so they are better equipped to accept and embrace the final air toxics program.

### **Preliminary Regulatory Impact Assessment**

7. The APCD has not provided a sufficient economic impact assessment for the STAR Program. The APCD notes in the Preliminary Regulatory Impact Assessment (PRIA) for Regulation 5.21 that its own estimates of modeling effort are provided by employees of state agencies, rather than by persons who actually perform these services for industrial clients. The APCD has greatly simplified its description and effort estimation for the modeling process, and assumes the modeler simply sits at a computer with all the required data in hand. In fact, the affected sources and professionals performing these services risk their livelihood on the performance of very detailed and accurate assessments such as these. The substantial effort and costs to be borne by affected sources for STAR program compliance tasks are clearly not included in the PRIA estimates. These tasks may include but are not limited to:
  - a. Evaluation and documentation of a manufacturing-related process, including production and emission rates, selection of calculation averaging times, unit conversions, determination of qualification of de minimus emissions, etc.
  - b. Assessment and selection of building dimensions, geographical/topographical area features, meteorological conditions, and other information required to build an accurate, defensible data set for the designated model(s).
  - c. Correspondence and negotiations with all parties involved during the process evaluation, modeling, evaluation and report of results, quality assurance/control, and development and submittal of applications pursuant to the STAR Program.
  - d. Developing Benchmark Ambient Concentrations (BACs) for those TACs that are not provided by the APCD, such as those required for Category 3 and Category 4 HAP compounds. It is likely the APCD will not provide BACs for potentially thousands of compounds in these categories.
  - e. Developing special risk assessments of specific TACs to demonstrate compliance with the General Duty requirements of Regulation 5.01, Section 3, if required.

Caldwell Tanks requests the APCD complete a more detailed and accurate economic impact assessment of the STAR Program that considers these aspects and allow a more reasonable timeframe for fiscal planning by affected sources.

8. Caldwell Tanks believes the APCD has significantly underestimated the number of permit applications that will be required due to material reformulations or changes. Many sources routinely change coating system formulations or other TAC-containing products because of changes in market demands, including Caldwell Tanks. Under many current permit conditions, such changes have not required permit amendment applications. The number and increased complexity of permit applications resulting from Regulation 5.21, in addition to those for construction and modification, could easily be double or more the APCD's estimate of 100 applications, resulting in additional permit issuance delays.

At a minimum, Caldwell Tanks requests the APCD include provisions in the STAR Program to allow raw material formulation changes without requiring additional modeling or permit modifications.

#### Regulation 5.21

9. Caldwell Tanks is concerned with the provisions of Reg. 5.21, Section 2, prohibiting a source from exceeding ambient levels of environmental acceptability (EALs) for any future process expansion or modification involving emission of a TAC. Under our existing Title V permit, a change in paint formulation would not require us to apply for a permit modification, while the STAR program regulations would require a new evaluation of any change in TAC content, modeling and permit revisions. We understand this requirement could result in more stringent controls on about 188 HAPs (and categories of HAPs perhaps reaching into the thousands of chemical compounds), as well as significant delays in making process changes, and will take effect immediately upon promulgation of the regulation.

Caldwell Tanks must utilize coatings meeting numerous American Water Works Association (AWWA) standards for potable water tanks to assure proper performance of the coatings and safety of drinking water. These paint formulations contain some HAPs, necessary for proper paint delivery, chemical bonding, cleanup, and performance. Caldwell Tanks is concerned compliance with the STAR Program may preclude or delay the use of certain specified coatings, causing loss of business opportunities and therefore a reduced competitive position in our industry. Furthermore, evaluation, modeling, and permit application costs aside, if Caldwell Tanks were required to install control devices on its paint booths to meet the EALs, such as a thermal oxidizer, potential capital and operating costs (easily as high as \$ 1 million and \$ 500,000 per year, respectively), would likely be too high for us to continue painting tank components in Louisville. Additionally, operating a thermal oxidizer would likely cause us to begin emitting significant quantities of nitrogen oxides. The cost to reduce regulated TACs to the proposed EALs could easily reach \$50,000 per ton, significantly more than the reasonable cost ranges quoted in the PRIA.

10. Caldwell Tanks generally opposes regulatory language such as noted in Regulation 5.21 Section 4.13: "If the District determines that the concentration of a TAC in the ambient air resulting from any TAC emission of a stationary source is, **or may be**, greater than an EA level in section 2.5 or 2.8, then the District may require emission reductions of that TAC. " This sort of open-ended language (highlighted above) gives the District the authority to impose requirements based on conjecture.

Caldwell Tanks opposes such vague and open-ended language in any regulation and urges the District to remove all similar language from its proposed regulations.

Caldwell Tanks strongly urges the APCD Board to consider a more focused strategy, extend the formal public comment period, and provide for a true stakeholder process to enact a balanced, science-based air toxics reduction program that has the best chance for true success without undue negative impact to the local economy.

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Louisville businesses are already competing in an aggressive global economy. Hit particularly hard by high raw material prices this past year, Caldwell Tanks is concerned that the expense of compliance with the regulations as proposed may severely impact our operation's profitability. Loss of business opportunities and curtailing of our operations in Jefferson County, without significant improvement to local air quality, may be the ultimate outcome of implementation of the proposed regulations.

If you have questions regarding this submittal, please contact me at 964-3361.

Sincerely,

Wilson Frazier, CSP, CUSA  
VP Environmental Health & Safety